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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

R. R. DONNELLEY & SONS COMPANY,
Petitioner,
v.

JUDY PREVOST et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONER

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BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONER

The National Association of Manufacturers of the United States of America ("NAM"), with the consent of the parties, files this brief as *amicus curiae* in support of the petitioner.[1]

[1]Letters of consent are on file with the Clerk. Counsel for Respondents indicated receipt of the corrected version of the Petition for Writ of Certiorari on February 7, 1991. This brief is timely if filed on or before March 11, 1991, under Rule 15.2.

STATEMENT OF INTEREST

NAM is a non-profit voluntary business association of approximately 12,500 manufacturing and related business concerns. Its members employ approximately 85 percent of all workers in the nation's manufacturing sector and produce more than 80 percent of the nation's manufactured goods. As employers, NAM's members provide a wide range of employee benefits under benefit plans that are regulated by the Employee Retirement Income Security Act of 1974 ("ERISA"), and each company is directly affected by state laws that interfere with those plans and the ability of the company to offer them to employees.

NAM believes that private employee benefit plans with their inherent flexibility to adapt to the almost infinite variety of requirements of different employees and employers should be encouraged to grow and prosper by favorable government policies and practices. State laws and regulations, if not properly constrained, can curtail the significant contribution that such plans make to both individual economic security and the entire economy, and can substantially interfere with the competitive position of a company both in selling its products and in attracting a quality work force.

This case involves whether Connecticut can require employers that provide benefits under ERISA benefit plans to make those benefits available to former employees long after those employees have left the company. Employers without employee benefit plans are under no similar compulsion. Thus, if not reversed the ruling of the court below will not only compound the financial and administrative burdens on companies that provide ERISA benefit plans, but also will touch off a flurry of activity in legislatures around the country to dramatically expand eligibility for ERISA plans

that are currently in effect.

NAM believes that this brief will offer the Court a unique perspective that underscores the need for a review of the decision of the United States Court of Appeals for the Second Circuit.

SUMMARY OF ARGUMENT

The Connecticut statute being challenged in this case requires employers who sponsor employee welfare benefit plans to provide "equivalent" coverage to all employees, including former employees, who are eligible for or are receiving workers' compensation in Connecticut. This mandate under Connecticut law can continue for the life of the employee. The statute requires that employee welfare benefits be provided to a larger eligible group and for a longer period of time than the employer envisioned when it established the plans, and gives a free ride to residents of Connecticut who happen to work for companies that provide employee welfare benefits through ERISA plans.

This free ride can have a significant effect on the internal costs faced by a company, thus affecting the competitiveness of the company, the viability of the employer's welfare benefit plans, and the variety and amount of benefits offered to employees around the country. The Connecticut law bootstraps a larger population into coverage under an employer's ERISA plan, forcing companies to consider reining in company-wide ERISA benefits to satisfy the supplementary requirements of Connecticut law. Congress adopted the broadly-worded ERISA preemption provision to prevent this kind of back-door mandated benefits tactic.

This issue is of paramount importance for several

reasons. In itself, this case involves substantial company liability under Connecticut law. The Second Circuit's opinion, if unchecked, could expose all employer-provided ERISA plans to substantial supplementary eligibility requirements under state laws around the country. The opinion misreads the limited exception of this Court's *Shaw* decision, and threatens to allow states to require free rides on all sorts of benefit plans under the guise of state workers' compensation, unemployment compensation and disability insurance law. ERISA benefits of many kinds that are routinely provided by employers, such as life insurance, health insurance and pensions will be affected by the approach taken by Connecticut's legislature.

ARGUMENT

I. THE SECOND CIRCUIT DECISION IS AT ODDS WITH THIS COURT'S DECISION IN *SHAW*

The State of Connecticut adopted the workers' compensation statute being challenged in this case to ensure that employees injured on the job continue to receive accident and health insurance or life insurance benefits they were receiving while working. The law requires employers that sponsor employee welfare benefit plans to provide "equivalent" coverage to all employees who are eligible to receive or are receiving workers' compensation benefits in Connecticut.[2]

The Second Circuit held that such a law relates to ERISA plans and is preempted unless the law is saved from

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[2]CONN. GEN. STAT. ANN. § 31-284b(a) (West 1987).

preemption by 29 U.S.C. § 1003(b)(3).[3] That court also held, purportedly in accordance with this Court's ruling in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), that the Connecticut law is saved from premption because a Connecticut employer could create a separate injured employee's plan as an "extension" of its ERISA plan designed solely for the purpose of complying with the Connecticut law.[4]

The *Shaw* case involved a state requirement that employers pay *specified* disability benefits, i.e., $95 per week or one-half of the employee's weekly wages, to eligible employees. This mandated benefit was imposed regardless of whether the employer had an ERISA plan. This Court ruled that since the state could mandate this specific benefit to be provided separately from the employer's ERISA plan, the employer could, at its own option, just as well incorporate the benefit into its ERISA plan.[5]

However, in the instant case, Connecticut is not mandating a *specified* benefit; rather, it demands that benefits under *existing* employee benefit plans, if any, be made available to "employees" as they are defined under Connecticut workers' compensation law. These benefits could range from complete health care and life insurance coverage all the way down to nothing. Thus, Connecticut does not specify an across-the-board benefit that is independent of benefits available under the employer's ERISA plan. The Second Circuit misread *Shaw* to allow states to mandate the extension of ERISA benefits to unemployed workers. In reality, *Shaw* allows

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[3]915 F.2d 787, 791-92, Pet. App. at A9-10.

[4]*Id.* at 793, Pet. App. at A13.

[5]*Id.*

ERISA plans to incorporate *otherwise legitimate* state-mandated benefits into them, thus easing the administration of mandated benefits by employers. The Second Circuit's interpretation of *Shaw* is clearly at odds with that opinion and should be reviewed.

II. THE CONNECTICUT STATUTE EXEMPLIFIES ONLY A PORTION OF THE BROAD EXCEPTION CREATED BY THE SECOND CIRCUIT

ERISA benefits that are routinely provided by employers and that are expressly drawn into the state's workers' compensation requirement include accident, health and life insurance.[6] Connecticut, or any other state, might also mandate that other ERISA benefits, such as pension benefits, be continued for all persons eligible for workers' compensation. Thus, even though Connecticut is concerned only with health, accident and life insurance, a state law could attach itself to *all* kinds of ERISA benefits.

In addition, although the Connecticut statute under review only involves benefits under a workers' compensation law, the language of Section 4(b)(3) of ERISA exempting certain benefit plans encompasses plans maintained solely to comply with unemployment compensation or disability insurance laws as well. Thus, the Second Circuit's ruling could allow a state to require companies to provide similar benefits to *unemployed* workers without running afoul of ERISA. Similarly, in those states where disability insurance

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[6]CONN. GEN. STAT. ANN. § 31-284b(a) (West 1987).

laws provide benefits,[7] employers could face similar obligations to provide ERISA benefits to eligible residents. Whether Congress intended for states to be able to free-ride on ERISA plans for these purposes is a fundamental issue in benefits law, and this case presents a proper vehicle for further resolution of how such laws should be interpreted.

III. THERE WILL BE PRESSURE FOR OTHER STATES TO BURDEN ERISA PLANS

The Second Circuit's ruling may encourage expansive legislative activity in other states. It can certainly be expected that other states will feel considerable pressure to keep the burden of dramatically increasing health-care costs on employer-funded plans. They will also feel an obligation from constituents to provide benefits comparable to those of other states. Thus, because Connecticut's statute has been validated by a United States court of appeals, other states are likely to move ahead in this area. Legal challenges to these new statutes can be expected to take the time and resources of all affected, and this Court's intervention at this point would be quite positive in defining the limits on this activity.

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[7]The *Shaw* case itself involved benefits for disabilities arising from *nonoccupational* injuries and illnesses, rather than workers' compensation benefits. *See* 463 U.S. 85, 89 (1983). Several states currently have similar disability benefits laws that might be amended to provide benefits based on ERISA plans. *See, e.g.*, CAL. UNEMP. INS. CODE § 2627 (West 1986); HAW. REV. STAT. § 392-21 (1985); N.J. STAT. ANN. §§ 43:21-29 & 43:21-37 (West 1962 & Supp. 1990); N.Y. WORK. COMP. LAW § 204 (McKinney 1965 & Supp. 1991).

IV. STATUTES LIKE CONNECTICUT'S CREATE INTOLERABLE ADMINISTRATIVE PROBLEMS

As this Court recognized in *Shaw*, "[o]bligating the employer to satisfy the varied and perhaps conflicting requirements of particular state fair employment laws . . . would make administration of a nationwide plan more difficult."[8] This in turn would produce "considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them."[9]

Congress adopted the ERISA preemption provision to prevent this kind of back-door attempt to regulate core ERISA concerns.[10] Because congressional intent is fundamental in any analysis of preemption,[11] the Second Circuit should have considered the clear purpose of the conspicuously broad preemption provision as reflected in the legislative history.[12] This Court has regularly repeated Congress's intent to establish a uniform administrative scheme for employee benefit plans, and it looks askance at any law that

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[8]463 U.S. at 105 n.25.

[9]*Fort Halifax Packing Co. v Coyne*, 482 U.S. 1, 11 (1987).

[10]*See Northern Group Services, Inc. v. Auto Owners Ins. Co.*, 833 F.2d 85, 91-95 (6th Cir. 1987), *cert. denied*, 486 U.S. 1017 (1988). *Cf. Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45-46 (1987) ("the express preemption provisions of ERISA are deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.'")

[11] *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 747 (1985).

[12]*See FMC Corp. v. Holliday*, 111 S. Ct. 403, 407 (1990).

requires a plan to keep certain records in some states but not in others, to make certain benefits available in some states but not in others, or to process claims in a certain way in some states but not in others.[13]

This Court rejected a state law that prohibited offsetting worker compensation payments against pension benefits because the law would require the employer to devise and operate a system for processing claims and paying benefits with different formulae in different states.[14] The case at bar involves a state requirement for maintaining benefits and processing claims with the same resulting interstate inconsistencies.

Many employers offer a variety of health benefit options, such as a selection of health maintenance organizations (HMOs) or other group insurance plans, each with different costs, benefits and requirements. In order for a company to comply with Connecticut's law by establishing "a separately administered plan," it would have to look not to specific benefits mandated by Connecticut law, but rather to the terms of its own plan or plans. Any change in an existing ERISA plan would trigger an obligation to amend a separate plan to provide "equivalent" benefits. For example, if an employer lowered the deductible amount in an ERISA plan one year, the change could lead to liability if the employer does not provide equivalent coverage in its separate plan. In another year, if the employer changed the percentage of the premium paid by the employees, a similar change must be made in its separate plan. If the company

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[13]*Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987).

[14]*Id.* at 10 (discussing *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981)).

should then alter a plan's requirement relating to second medical opinions for surgery, it must then make sure that every separately administered plan established under state law requirements provide equivalent benefits.

Litigation over whether changes in benefits were provided, whether changes were made, and whether they were in fact "equivalent" will mean that a separate plan is not in fact practical. This problem is compounded by the possibility that fifty states could adopt comparable statutes, and "equivalent" plans set up in each state would all have to be modified whenever there is a change in an employer's ERISA plan. This is exactly the result Congress intended to prevent.

V. THE CONNECTICUT LAW SUBJECTS EMPLOYERS TO SUBSTANTIAL COSTS

If this decision is a proper reading of the exception to the general rule that state laws relating to ERISA plans are preempted, it will have a substantial impact both in Connecticut and around the country. In Connecticut, workers are eligible to receive certain workers' compensation benefits for life.[15] Thus, an employer has to provide its regular ERISA plan benefits to workers that may have long since left the workforce. This requirement will clearly have a significant impact on all companies, both large and small.

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[15] CONN. GEN. STAT. ANN. §§ 31-308(a), (d) & 31-307 (West 1987) (eligibility for partial incapacity for up to 780 weeks; eligibility for total incapacity limited only to the period of incapacity); J. Asselin, *The Connecticut Workers' Compensation Practice Manual* 126 (1985). *See Forkas v. International Silver Co.*, 100 Conn. 417 (1924); *Greenwood v. Luby*, 105 Conn. 398, 400 (1926).

This statute can have a significant effect on the internal costs faced by a company, thus affecting the competitiveness of the company, the viability of the employer's welfare benefit plans, and the company's willingness to bear the added risk arising out of the presence of a workforce in Connecticut. The Connecticut law bootstraps a larger population into coverage under an employer's ERISA plan for a longer period of time, forcing companies to consider reining in company-wide ERISA benefits to satisfy the supplementary requirements of Connecticut law. Moreover, because costs per worker are increased, companies may be forced to reduce these costs by laying workers off, or not hiring new workers, or by reducing other benefits. Therefore, these benefits will not necessarily raise the welfare of workers as a whole, but may even have the opposite effect.

The statute also gives a free ride to residents of Connecticut who happen to work for companies that provide employee welfare benefits through ERISA plans. This free ride occurs when state residents benefit from eligibility criteria, mandated by the state government, that take advantage of contributions made to the plan either by employees outside the state or by the company as a whole.

In short, the Second Circuit's ruling will legitimize the power of a state to require that ERISA plan benefits be made available to an extent far exceeding the expectations of plan sponsors, trustees or beneficiaries.

CONCLUSION

The Supreme Court should take this opportunity to provide states, employers and employees with a decision that clearly limits the extent to which ERISA plan benefits may be

expanded by state law. If states are allowed to freely roam among ERISA-governed employee benefits programs under the guise of workers' compensation law, an important national policy promoting the development of wide-ranging benefits packages will be seriously distorted and undermined. This could cause a retrenchment in the breadth and level of employee benefits at a time when international and domestic competition, recessionary pressures and the impact of health care costs are so strong.

We urge that the petition for a writ of certiorari be granted.

Respectfully submitted,

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